

DE 99-074

**WESTERN MASSACHUSETTS ELECTRIC COMPANY**

**Affiliate Application for Findings Pursuant to Section 32(c) of  
the Public Utility Holding Company Act of 1935**

**Order On Requested Findings**

**O R D E R    N O.    23,254**

**July 7, 1999**

**APPEARANCES:** Public Service Company of New Hampshire by Robert Berzak, Esq.; Hogan and Hartson L.L.P. by John Lilystrom, Esq. for Consolidated Edison Energy Massachusetts, Inc.; Michael Holmes, Esq. for the Office of Consumer Advocate on behalf of residential ratepayers; and the Staff of the Public Utilities Commission by Thomas C. Frantz and George McCluskey, and Gary Epler, Esq., Commission's General Counsel.

**I.    BACKGROUND**

On May 12, 1999, Western Massachusetts Electric Company (WMECo), filed with the New Hampshire Public Utilities Commission (Commission) a request for certain findings required by the Public Utilities Holding Company Act of 1935 (PUHCA) in order to confer eligible facilities<sup>1</sup> status on certain non-nuclear generating facilities that WMECo proposes to transfer to Consolidated Edison Energy, Inc. (CEEI). WMECo is an affiliate of Public Service Company of New Hampshire (PSNH) and a wholly-owned operating company of Northeast Utilities, a registered holding company under PUHCA.

After a competitive auction process subject to the

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<sup>1</sup> Eligible facilities are those facilities used for the "generation of electric energy exclusively for sale at wholesale." 15 U.S.C.A. §792-5a(2)(A).

approval of the Massachusetts Department of Telecommunications and Energy (MDTE), WMECo entered into a Purchase and Sale Agreement with Consolidated Edison Energy, Inc. for the sale of 290 megawatts of WMECo's non-nuclear generating assets. WMECo states that a condition to the closing of the sale is a determination from the Federal Energy Regulatory Commission (FERC) that CEEI is an exempt wholesale generator pursuant to Section 32(a)(2) of PUHCA. Because the facilities being sold by WMECo have been in WMECo's rate base, WMECo contends that a determination that they are eligible facilities under Section 32(c) of PUHCA is needed.

On May 25, 1999, PSNH filed the testimony of John B. Keane of WMECo before the MDTE. The Commission opened DE 99-074 to investigate the required findings under Section 32(c) of PUHCA. An Order of Notice was issued on June 8, 1999, setting a pre-hearing conference and technical session for June 30, 1999. In addition, an informal technical conference was held on June 23, 1999. On June 24, 1999, a request for intervention was filed by CEEI and Consolidated Edison Energy Massachusetts, Inc. (CEEMI), the purchasers of the generating assets of WMECo.

At the pre-hearing conference, the parties and Staff agreed to meet to discuss issues, and if possible, to reconvene the hearing later in the day. The parties and Staff agreed to move forward with the hearing on the merits in light of CEEI's request for expedited consideration and the absence of any motions for intervention filed at the pre-hearing conference. The Commission agreed to expedited consideration and a hearing on the merits was held on June 30, 1999 after the parties and Staff ended the technical conference.

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. PSNH**

At the hearing, PSNH presented the testimony of Stephen Hall, Manager of Rates and Regulatory Matters. Mr. Hall testified as to how the proposed sale of WMECo's non-nuclear assets, due to Massachusetts restructuring legislation would affect the Sharing Agreement and therefore the costs PSNH recovers from customers through the Fuel and Purchased Power Adjustment Clause(FPPAC). He stated that there would be a slight, almost imperceptible, benefit to PSNH's customers after the WMECo/CEEI sale is consummated. The benefit occurs because the sale of WMECo's non-nuclear generating assets in conjunction with continued load obligation by WMECo results in higher own-load fuel costs for the Initial System as defined in the Sharing Agreement. Higher Initial System own-load costs lead to

increased joint dispatch savings (JDS) which are split equally between the Initial System and PSNH in accordance with the Sharing Agreement. Mr. Hall's testimony also discussed the pending sale of Connecticut Light and Power Company's (CL&P) non-nuclear assets and the effects that transaction and Connecticut electric restructuring will have on PSNH's customers. According to Mr. Hall, due to Massachusetts and Connecticut restructuring legislation, the Sharing Agreement becomes inoperable on January 1, 2000. The inoperability of the Sharing Agreement occurs because there will no longer be an Initial System with its own generating assets and load responsibility for purposes of calculating combined system dispatch savings or capacity transfer revenues.

PSNH emphasizes, however, that the denial of the requested findings in the instant proceeding will not alter the fact that WMECo must sell these assets pursuant to a Massachusetts mandate. Denial of the petition would require WMECo to go out to auction again. PSNH also points out that a purchaser who did not require exempt wholesale generator status from FERC would not need this Commission's approval. PSNH asserts that non-EWG status would result in a lower bid price and therefore less revenue to offset stranded costs for WMECo's customers.

**B. OCA and Staff**

Staff and the Office of Consumer Advocate (OCA) filed post-hearing comments on WMECo's requested findings. Both OCA and Staff are concerned about the loss of the benefits associated with the Sharing Agreement. Staff mentions that PSNH's customers receive \$2 million to \$5 million per month in cost savings due the combination of JDS and/or capacity transfer revenues. OCA points out that the savings are approximately \$55 million per year. OCA believes the findings requested herein accrue to the benefit of NU shareholders or Massachusetts ratepayers, but not to PSNH's customers. OCA recommends that the Commission deny the public interest approval sought by WMECo.

Staff does not oppose granting WMECo's requested findings, but cites numerous issues associated with the inoperability of the Sharing Agreement as of January 1, 2000. Staff also urges the Commission to reserve its right to review and rule upon any cost allocation effects or changes in future proceedings.

### **III. COMMISSION ANALYSIS**

WMECo requests that this Commission make certain findings under Section 32 of PUHCA in order for CEEI/CEEMI to operate as an exempt wholesale generator. Those findings are necessary because the generating assets being sold were previously in the rate base of a retail operating company and cannot be sold with EWG status to CEEI/CEEMI if states with

ratemaking jurisdiction do not make the specific findings. Those findings require this Commission and the MDTE and Connecticut Department of Public Utilities Control to find that allowing the proposed generating assets to be eligible facilities 1) will benefit customers; 2) is in the public interest; and 3) does not violate state law.

A finding of eligible facilities status of WMECo's non-nuclear assets is a pre-condition to closing the sale to CEEI/CEEMI, according to the testimony of PSNH. Because the assets in question are being transferred to an entity that will be engaged in the competitive electricity market in New England, we find that the designation of those assets as eligible facilities will benefit consumers, in general, and is in the public interest. In addition, we are aware of no state law that would prohibit this designation. Whether the WMECo plant sale is made to an EWG at a higher price, or a rate-regulated utility at a lower price, will not affect our jurisdiction to address the issues raised by these sales concerning the Sharing Agreement. Accordingly, based on the record before us, we make the requested findings of Section 32(c) of PUHCA. Notwithstanding our decision to make the requested designation, our concern in this proceeding centers on how this pending sale, as well as CL&P's pending generation plant sale, will affect PSNH's customers through the Sharing Agreement and the Rate Agreement. The concerns raised by Staff and the OCA on the effects this sale and the pending CL&P

sale will have on the Sharing Agreement and cost allocation are shared by this Commission. PSNH's claim in this proceeding that the Sharing Agreement will become inoperable or effectively nullified on January 1, 2000, as a result of actions by other states and state regulators, raises questions about the validity of PSNH's arguments concerning New Hampshire's restructuring orders as they pertain to any obligations under the Sharing Agreement. The effects of WMECo's and CL&P's asset divestitures as they relate directly to PSNH's customers will be subject to further review by the Commission in an appropriate proceeding.

**Based upon the foregoing, it is hereby**

**ORDERED,** that the findings requested by Western Massachusetts Electric Company are approved as described herein.

By order of the Public Utilities Commission of New  
Hampshire this seventh day of July, 1999.

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Douglas L. Patch  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Thomas B. Getz  
Executive Director and Secretary